



Office of the Attorney General  
State of Texas

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October 25, 1995

Ms. Christine T. Rodriguez  
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Legal Services, MC110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR95-1134

Dear Ms. Rodriguez:

Your predecessor asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27732.

The Texas Department of Insurance (the "department") has received a request for the most recent rate filings of four companies: the Medical Protective Company, the American Physicians Insurance Exchange ("APIE"), the Texas Hospital Insurance Exchange, and the St. Paul Companies. The department raises no exceptions to the release of the requested information.<sup>1</sup>

Since the property and privacy rights of third parties, the companies, are implicated by the release of the requested information here, this office notified those parties of this request. See Gov't Code § 552.305; Open Records Decision No. 542 (1990). Two of the companies, the Medical Protective Company and the APIE, have responded to our notification by asserting that the requested information is excepted from required public disclosure under the Open Records Act. Since the other two companies have not responded to our notification, we assume that they do not have a privacy

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<sup>1</sup>The department has submitted for our inspection the actuarial data for the Texas Hospital Insurance Exchange, the St. Paul Companies, American Physicians Insurance Exchange, and the Medical Protective Company.

or property interest in the requested information. Thus, the department must release the information that concerns the St. Paul Companies and the Texas Hospital Insurance Exchange.

APIE asserts that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Section 552.104 states that:

Information is excepted from [required public disclosure] if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Consequently, a governmental body may waive section 552.104. *See* Open Records Decision No. 592 (1991) at 8. In this instance, the department did not raise section 552.104; only APIE did so. Section 552.104 is inapplicable to protect the interests of APIE. Accordingly, the department may not withhold the requested information based on section 552.104 of the Government Code.

Section 552.110 excepts from disclosure a trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. APIE explains that

we believe the statistical data and Actuarial Rating Study is privileged and confidential financial information specifically to APIE. The statistical information and rate study was gathered and completed solely to price our products competitively and adequately in the open insurance market and to receive required rating approval from the Texas Department of Insurance. This was done at a significant cost to the company of \$50,000 and took a large amount of time to develop. Because of the purpose, confidentiality, and the cost and time involve to APIE, we believe the information should not be made public under common law.

APIE does not assert that the requested information constitutes a trade secret. Nor does APIE explain what other common-law doctrine would make the information confidential. We, therefore, conclude that the department may not withhold the requested information about APIE based on section 552.110. *See* Open Records Decision No. 592 (1991) at 7-8.

The Medical Protective Company asserts that its actuarial studies are excepted from required public disclosure under section 552.110 as trade secrets. The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we accept a private person's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5.<sup>2</sup>

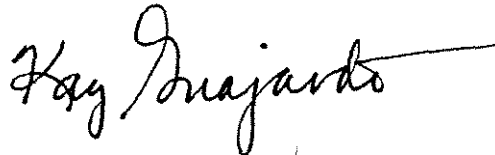
We conclude that the Medical Protective Company has established a prima facie case that its actuarial studies are trade secrets. Accordingly, the department must withhold that information pursuant to section 552.110 of the Government Code. The remainder of the requested information must be released.

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<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." RESTATEMENT OF TORTS, *supra*; *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



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KHG/rho

Ref.: ID# 27732

Enclosures: Submitted documents

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